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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF BUTTE**

THOMAS HAVEN, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

CALIFORNIA VOCATIONS, INC., a
California Corporation; and DOES 1-50,
Inclusive,

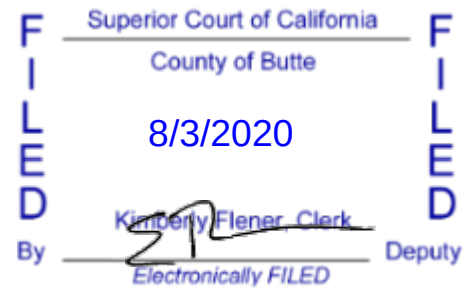
Defendants.

Case No: **20CV01514**

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 3) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197, AND 1197.1; and
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq*.

DEMAND FOR A JURY TRIAL



1
2 Plaintiff Thomas Haven (“PLAINTIFF”), an individual, on behalf of himself and all other
3 similarly situated current and former employees, alleges on information and belief,
4 except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **PRELIMINARY ALLEGATIONS**

7 1. Defendant California Vocations, Inc. (“DEFENDANT”) is a California
8 corporation and at all relevant times mentioned herein conducted and continues to conduct
9 substantial and regular business throughout California.

10 2. DEFENDANT provides residential and vocational support to developmentally
11 disabled adults.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
13 employee entitled to minimum wages, overtime pay and meal and rest periods from August of
14 2016 to November of 2019. PLAINTIFF was at all times relevant mentioned herein classified
15 by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
16 received additional compensation from DEFENDANT in the form of non-discretionary
incentive wages.

17 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
18 defined as all individuals who are or previously were employed by DEFENDANT in California
19 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
20 period beginning April 6, 2016 and ending on the date as determined by the Court (the
21 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
22 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

23 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
24 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
25 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
26 which failed to lawfully compensate these employees for all their time worked, including
27 overtime. DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and
28 deceptive business practice whereby DEFENDANT retained and continues to retain wages due

1 to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
2 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
3 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
4 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
5 current unlawful conduct, and all other appropriate legal and equitable relief.

6 6. The true names and capacities, whether individual, corporate, subsidiary,
7 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
8 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
9 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
10 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
11 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
12 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
13 responsible in some manner for one or more of the events and happenings that proximately
14 caused the injuries and damages hereinafter alleged

15 7. The agents, servants and/or employees of the Defendants and each of them acting
16 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
17 agent, servant and/or employee of the Defendants, and personally participated in the conduct
18 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
19 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
20 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
21 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
22 Defendants' agents, servants and/or employees

23 **THE CONDUCT**

24 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
25 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
26 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to
27 accurately calculate wages for overtime worked by PLAINTIFFS and other members of the
28 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime

1 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
2 forfeited wages due them for working overtime without compensation at the correct overtime
3 rates. DEFENDANT's uniform policy and practice to not pay the members of the
4 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with
5 applicable law is evidenced by DEFENDANT's business records.

6 9. State law provides that employees must be paid overtime at one-and-one-
7 halftimes their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members
8 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
9 employee's performance.

10 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
11 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
12 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
13 performance for DEFENDANT. The non-discretionary incentive program provided all
14 employees paid on an hourly basis with incentive compensation when the employees met the
15 various performance goals set by DEFENDANT. However, when calculating the regular rate of
16 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
17 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
18 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
19 the incentive program to potential and new employees as part of the compensation package. As
20 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
21 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
22 in a systematic underpayment of overtime compensation to PLAINTIFF and other
23 CALIFORNIA CLASS Members by DEFENDANT.

24 11. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
26 matter of company policy, practice and procedure, intentionally and knowingly failed to
27 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct
28 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is

1 intended to purposefully avoid the payment of the correct overtime compensation as required by
2 California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
3 over competitors who complied with the law. To the extent equitable tolling operates to toll
4 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
5 PERIOD should be adjusted accordingly.

6 12. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
8 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
9 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT
10 for more than five (5) hours during a shift without receiving an off-duty meal break.
11 Occasionally, PLAINTIFF and other CALIFORNIA CLASS Members had to work through
12 what was supposed to be their off-the-clock meal break. Further, DEFENDANT failed to
13 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
14 each workday in which these employees were required by DEFENDANT to work ten (10) hours
15 of work. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
16 breaks without additional compensation and in accordance with DEFENDANT's strict
17 corporate policy and practice

18 13. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
19 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
20 without being provided ten (10) minute rest periods. Further, these employees were denied their
21 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
22 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
23 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
24 minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other
25 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
26 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS
27 Members were periodically denied their proper rest periods by DEFENDANT and
28 DEFENDANT's managers.

1 14. DEFENDANT as a matter of corporate policy, practice and procedure,
2 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
3 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
4 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
5 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
6 are required to indemnify employees for all expenses incurred in the course and scope of their
7 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
8 her employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
10 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
11 believed them to be unlawful."

12 15. In the course of their employment, PLAINTIFF and other CALIFORNIA
13 CLASS Members as a business expense, were required by DEFENDANT to use their own
14 personal cellular phones as a result of and in furtherance of their job duties as employees for
15 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
16 associated with the use of their personal cellular phones for DEFENDANT's benefit.
17 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
18 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the
19 course of their employment with DEFENDANT the PLAINTIFF and other members of the
20 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
21 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
22 benefit of DEFENDANT.

23 16. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
24 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
25 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
26 CLASS with complete and accurate wage statements which failed to show, among other things,
27 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)
28 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments

1 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
2 furnish each of his or her employees with an accurate itemized wage statement in writing
3 showing, among other things, gross wages earned and all applicable hourly rates in effect during
4 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
5 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
6 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
7 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
8 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

9 17. By reason of this uniform conduct applicable to PLAINTIFF and all
10 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
11 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
12 *seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
13 accurately calculate and record the correct overtime rate for the overtime worked by
14 PLAINTIFF and other CALIFORNIA CLASS Members. The proper calculation of these
15 employees’ overtime hour rates is the DEFENDANT’s burden. As a result of DEFENDANT’s
16 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
17 calculate and/or pay all required overtime compensation for work performed by the members of
18 the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
19 thereunder as herein alleged.

20 18. Specifically as to PLAINTIFF’S pay, DEFENDANT provided compensation to
21 him in the form of two components. One component of PLAINTIFF’S compensation was a base
22 hourly wage. The second component of PLAINTIFF’S compensation were non-discretionary
23 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain
24 predefined performance requirements. PLAINTIFF met DEFENDANT’S predefined eligibility
25 performance requirements in various pay periods throughout his employment with
26 DEFENDANT and DEFENDANT paid PLAINTIFF the incentive wages. During these pay
27 periods in which PLAINTIFF was paid the non-discretionary incentive wages by
28 DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but DEFENDANT never

1 included the incentive compensation in PLAINTIFF’S regular rate of pay for the purposes of
2 calculating what should have been PLAINTIFF’S accurate overtime rate and thereby underpaid
3 PLAINTIFF for overtime worked throughout her employment with DEFENDANT. The
4 incentive compensation paid by DEFENDANT constituted wages within the meaning of the
5 California Labor Code and thereby should have been part of PLAINTIFF’S “regular rate of
6 pay.” PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and
7 was not fully relieved of duty for his meal periods, resulting in off-the-clock work and unpaid
8 minimum wages. PLAINTIFF was required to perform work as ordered by DEFENDANT for
9 more than five (5) hours during a shift without receiving an off-duty meal break. Further,
10 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
11 in which he was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF
12 therefore forfeited meal and rest breaks without additional compensation and in accordance with
13 DEFENDANT’s strict corporate policy and practice. DEFENDANT also provided PLAINTIFF
14 with a paystub that failed to accurately display PLAINTIFF’S correct rates of overtime pay and
15 payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code
16 § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation still
17 owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in
18 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

19 **JURISDICTION AND VENUE**

20 19. This Court has jurisdiction over this Action pursuant to California Code of Civil
21 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
22 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees
23 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

24 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
25 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
26 maintained offices and facilities in this County and/or conducts substantial business in this
27 County, and (ii) committed the wrongful conduct herein alleged in this County against members
28 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

THE CALIFORNIA CLASS

21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning April 6, 2016 and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

23. The California Legislature has commanded that "all wages... ..earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays", and further that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC), however, is statutorily authorized to "establish exemptions from the requirement that an overtime rate of compensation be paid... ..for executive, administrative, and professional employees, provided [inter alia] that the employee is primarily engaged in duties that meet the test of the exemption, [and] customarily and regularly exercises discretion and independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS qualify for exemption from the above requirements.

24. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and

1 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
2 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other
3 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
4 work, required employees to perform this work and permitted or suffered to permit this
5 overtime work.

6 25. DEFENDANT has the legal burden to establish that each and every
7 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
8 accurately calculate the “regular rate of pay” by including the incentive compensation that
9 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
10 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
11 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
12 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
13 overtime rate for all overtime worked, so as to satisfy their burden. This common business
14 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
15 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
16 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
17 claim.

18 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
19 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
20 employee for all overtime worked at the applicable rate, as required by California Labor Code
21 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
22 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
23 as to include all earnings in the overtime compensation calculation as required by California
24 Labor Code §§ 510, *et seq.*

25 27. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that failed to pay all wages due the CALIFORNIA CLASS for all time worked, including overtime, and failed to accurately record the applicable rates of all overtime worked by the CALIFORNIA CLASS;
- b. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly, and/or deceptively having in place a company policy, practice and procedure that failed to correctly calculate overtime compensation due to PLAINTIFF and the members of the CALIFORNIA CLASS;
- c. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members;
- d. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

29. The Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
3 of the CALIFORNIA CLASS, was subjected to the uniform employment
4 practices of DEFENDANT and was a non-exempt employee paid on an hourly
5 basis and paid additional non-discretionary incentive wages who was subjected
6 to the DEFENDANT's practice and policy which failed to pay the correct rate of
7 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
8 CALIFORNIA CLASS and thereby systematically under pays overtime
9 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
10 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
11 members of the CALIFORNIA CLASS were and are similarly or identically
12 harmd by the same unlawful, deceptive, unfair and pervasive pattern of
13 misconduct engaged in by DEFENDANT; and
- 14 d. The representative PLAINTIFF will fairly and adequately represent and protect
15 the interest of the CALIFORNIA CLASS, and has retained counsel who are
16 competent and experienced in Class Action litigation. There are no material
17 conflicts between the claims of the representative PLAINTIFF and the members
18 of the CALIFORNIA CLASS that would make class certification inappropriate.
19 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
20 CALIFORNIA CLASS Members.

21 30. In addition to meeting the statutory prerequisites to a Class Action, this action is
22 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 23 a. Without class certification and determination of declaratory, injunctive, statutory
24 and other legal questions within the class format, prosecution of separate actions
25 by individual members of the CALIFORNIA CLASS will create the risk of:
- 26 i. Inconsistent or varying adjudications with respect to individual members
27 of the CALIFORNIA CLASS which would establish incompatible
28

standards of conduct for the parties opposing the CALIFORNIA CLASS;
and/or;

ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due, including the correct overtime rate, for all time worked by the members of the CALIFORNIA CLASS as required by law;

i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seek declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to

1 recover the relatively small amount of economic losses sustained by the
2 individual CALIFORNIA CLASS Members when compared to the
3 substantial expense and burden of individual prosecution of this
4 litigation;

5 ii. Class certification will obviate the need for unduly duplicative litigation
6 that would create the risk of:

7 1. Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA CLASS, which would establish
9 incompatible standards of conduct for the DEFENDANT; and/or;

10 2. Adjudications with respect to individual members of the
11 CALIFORNIA CLASS would as a practical matter be dispositive
12 of the interests of the other members not parties to the
13 adjudication or substantially impair or impede their ability to
14 protect their interests;

15 iii. In the context of wage litigation, because a substantial number of
16 individual CALIFORNIA CLASS Members will avoid asserting their
17 legal rights out of fear of retaliation by DEFENDANT, which may
18 adversely affect an individual's job with DEFENDANT or with a
19 subsequent employer, the Class Action is the only means to assert their
20 claims through a representative; and

21 iv. A class action is superior to other available methods for the fair and
22 efficient adjudication of this litigation because class treatment will
23 obviate the need for unduly and unnecessary duplicative litigation that is
24 likely to result in the absence of certification of this action pursuant to
25 Cal. Code of Civ. Proc. § 382.

26 31. The Court should permit this action to be maintained as a Class Action pursuant
27 to Cal. Code of Civ. Proc. § 382 because:
28

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and

- 1 i. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims
3 arising out of the conduct of DEFENDANT as to the members of the
4 CALIFORNIA CLASS.

5 32. DEFENDANT maintains records from which the Court can ascertain and
6 identify by job title each of DEFENDANT's employees who as have been systematically,
7 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
8 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
9 any additional job titles of similarly situated employees when they have been identified.

10 **THE CALIFORNIA LABOR SUB-CLASS**

11 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
12 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
13 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
14 SUB-CLASS") at any time during the period beginning April 6, 2017 and ending on the date as
15 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
16 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
17 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

18 34. DEFENDANT, as a matter of company policy, practice and procedure, and in
19 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
20 requirements, and the applicable provisions of California law, intentionally, knowingly, and
21 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
22 compensation for the overtime worked by PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
24 work, required employees to perform this work and permitted or suffered to permit this
25 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
26 CLASS Members overtime wages at the correct amount to which these employees are entitled
27 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
28

operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

35. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT's employees who have been systematically, intentionally and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable

37. Common questions of law and fact exist as to members of the CALIFORNIA LABOR SUB-CLASS, including, but not limited, to the following:

- a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime compensation to members of the CALIFORNIA LABOR SUB-CLASS in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to compensation for time worked, including overtime worked, under the overtime pay requirements of California law;
- c. Whether DEFENDANT failed to accurately record the applicable overtime rates for all overtime worked PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS;
- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;

- f. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANT's conduct was willful.

38. DEFENDANT, as a matter of company policy, practice and procedure, failed to accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the applicable overtime rates for the overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANT according to uniform and systematic company procedures as alleged herein above. This business practice was uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 1194, 1197, 1197.1 by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS for all the time they work;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

- 1 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
3 statement in writing showing all accurate and applicable overtime rates in effect
4 during the pay period and the corresponding amount of time worked at each
5 overtime rate by the employee;
- 6 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
7 CALIFORNIA CLASS members with necessary expenses incurred in the
8 discharge of their job duties; and
- 9 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
10 employee is discharged or quits from employment, the employer must pay the
11 employee all wages due without abatement, by failing to tender full payment
12 and/or restitution of wages owed or in the manner required by California law to
13 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
14 their employment.

15 40. This Class Action meets the statutory prerequisites for the maintenance of a
16 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 17 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
18 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
19 is impracticable and the disposition of their claims as a class will benefit the
20 parties and the Court;
- 21 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
22 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
23 CLASS and will apply uniformly to every member of the CALIFORNIA
24 LABOR SUB-CLASS;
- 25 c. The claims of the representative PLAINTIFF are typical of the claims of each
26 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
27 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
28 employee paid on an hourly basis and paid additional non-discretionary incentive

1 wages who was subjected to the DEFENDANT's practice and policy which
2 failed to pay the correct rate of overtime wages due to the CALIFORNIA
3 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
4 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
5 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
6 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
7 of misconduct engaged in by DEFENDANT; and

- 8 d. The representative PLAINTIFF will fairly and adequately represent and protect
9 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
10 counsel who are competent and experienced in Class Action litigation. There are
11 no material conflicts between the claims of the representative PLAINTIFF and
12 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
13 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
14 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
15 Members.

16 41. In addition to meeting the statutory prerequisites to a Class Action, this action is
17 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 18 a. Without class certification and determination of declaratory, injunctive, statutory
19 and other legal questions within the class format, prosecution of separate actions
20 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
21 the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual members
23 of the CALIFORNIA LABOR SUB-CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA LABOR SUB-CLASS; or
- 26 ii. Adjudication with respect to individual members of the CALIFORNIA
27 LABOR SUB-CLASS which would as a practical matter be dispositive of
28

1 interests of the other members not party to the adjudication or
2 substantially impair or impede their ability to protect their interests.

3 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
4 refused to act on grounds generally applicable to the CALIFORNIA LABOR
5 SUB-CLASS, making appropriate class-wide relief with respect to the
6 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
7 uniformly failed to pay all wages due, including the correct overtime rate, for all
8 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
9 required by law;

10 c. Common questions of law and fact predominate as to the members of the
11 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
12 violations of California Law as listed above, and predominate over any question
13 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
14 Class Action is superior to other available methods for the fair and efficient
15 adjudication of the controversy, including consideration of:

16 i. The interests of the members of the CALIFORNIA LABOR SUB-
17 CLASS in individually controlling the prosecution or defense of separate
18 actions in that the substantial expense of individual actions will be
19 avoided to recover the relatively small amount of economic losses
20 sustained by the individual CALIFORNIA LABOR SUB-CLASS
21 Members when compared to the substantial expense and burden of
22 individual prosecution of this litigation;

23 ii. Class certification will obviate the need for unduly duplicative litigation
24 that would create the risk of:

25 1. Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA LABOR SUB-CLASS, which
27 would establish incompatible standards of conduct for the
28 DEFENDANT; and/or,

2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

42. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- 1 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
2 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
3 CLASS before the Court;
- 4 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
5 not be able to obtain effective and economic legal redress unless the action is
6 maintained as a Class Action;
- 7 e. There is a community of interest in obtaining appropriate legal and equitable
8 relief for the acts of unfair competition, statutory violations and other
9 improprieties, and in obtaining adequate compensation for the damages and
10 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
11 LABOR SUB-CLASS;
- 12 f. There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of the
14 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 15 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
16 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
17 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 18 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
19 ascertainable from the business records of DEFENDANT. The CALIFORNIA
20 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
21 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
22 PERIOD; and
- 23 i. Class treatment provides manageable judicial treatment calculated to bring an
24 efficient and rapid conclusion to all litigation of all wage and hour related claims
25 arising out of the conduct of DEFENDANT as to the members of the
26 CALIFORNIA LABOR SUB-CLASS.
- 27
28

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 43. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 44. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

10 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
12 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

18 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
19 engage in a business practice which violates California law, including but not limited to, the
20 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
21 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,
22 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
23 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
24 constitute unfair competition, including restitution of wages wrongfully withheld.

25 47. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
26 unfair in that these practices violated public policy, were immoral, unethical, oppressive
27 unscrupulous or substantially injurious to employees, and were without valid justification or
28 utility for which this Court should issue equitable and injunctive relief pursuant to Section

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 48. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
6 accurately to record the applicable rate of all overtime worked, and failed to provide the
7 required amount of overtime compensation due to a systematic miscalculation of the overtime
8 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
9 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
10 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
11 including restitution of wages wrongfully withheld.

12 49. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
13 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANT.

16 50. By the conduct alleged herein, DEFENDANT's practices were also unfair and
17 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

19 51. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
20 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
21 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
22 for each workday in which a second off-duty meal period was not timely provided for each ten
23 (10) hours of work.

24 52. PLAINTIFF further demands on behalf of herself and on behalf of each
25 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
26 was not timely provided as required by law.

27 53. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
2 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

5 54. All the acts described herein as violations of, among other things, the Industrial
6 Welfare Commission Wage Orders, the California Code of Regulations, and the California
7 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
8 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
9 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

10 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
11 and do, seek such relief as may be necessary to restore to them the money and property which
12 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
14 unfair business practices, including earned but unpaid wages for all overtime worked.

15 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

19 57. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
20 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
21 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
22 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
23 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
24 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
25 engage in these unlawful and unfair business practices.

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SECOND CAUSE OF ACTION

**FAILURE TO PAY OVERTIME COMPENSATION
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
Defendants)**

58. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

60. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

61. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amount specified by law.

62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

63. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set forth herein, DEFENDANT's uniform policy and practice was to

1 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
3 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
4 all overtime worked.

5 64. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
6 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
7 result of implementing a uniform policy and practice that denied accurate compensation to
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for all
9 overtime worked, including, the work performed in excess of eight (8) hours in a workday
10 and/or forty (40) hours in any workweek.

11 65. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
13 consequently underpaid the actual time worked by PLAINTIFF and other members of the
14 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
15 payment of all earned wages, and other benefits in violation of the California Labor Code, the
16 Industrial Welfare Commission requirements and other applicable laws and regulations.

17 66. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
19 receive full compensation for all overtime worked.

20 67. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
24 to a valid collective bargaining agreement that would preclude the causes of action contained
25 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the
26 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
27 non-waivable rights provided by the State of California.

28 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
they were entitled to, constituting a failure to pay all earned wages.

1 69. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
3 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
4 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
6 to accurately record and pay using the applicable overtime rate as evidenced by
7 DEFENDANT's business records and witnessed by employees.

8 70. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
9 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS for the true time they worked, PLAINTIFF and the other members of the
11 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
12 injury in amounts which are presently unknown to them and which will be ascertained
13 according to proof at trial.

14 71. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
16 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
17 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
18 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
19 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
20 applicable overtime rate.

21 72. In performing the acts and practices herein alleged in violation of California labor
22 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
23 all time worked and provide them with the requisite overtime compensation, DEFENDANT
24 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
25 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
26 disregard for their legal rights, or the consequences to them, and with the despicable intent of
27 depriving them of their property and legal rights, and otherwise causing them injury in order to
28 increase company profits at the expense of these employees.

 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
therefore request recovery of all unpaid wages, including overtime wages, according to proof,

1 interest, statutory costs, as well as the assessment of any statutory penalties against
2 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
3 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
4 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S
5 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
6 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
7 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as
8 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
9 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

12 **(Cal. Lab. Code §§ 226.7 & 512)**

13 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
14 **Defendants)**

15 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 75. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
19 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
20 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
21 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
22 did not prevent these employees from being relieved of all of their duties for the legally required
23 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
24 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
25 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
26 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
27 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
28 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS

1 therefore forfeited meal breaks without additional compensation and in accordance with
2 DEFENDANT's strict corporate policy and practice.

3 76. DEFENDANT further violated California Labor Code §§ 226.7 and the
4 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
5 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable
6 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
7 each workday that a meal period was not provided.

8 77. As a proximate result of the aforementioned violations, PLAINTIFF and
9 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
10 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

11 12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

14 **(Cal. Lab. Code §§ 226.7 & 512)**

15 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)**

16 78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
17 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
18 paragraphs of this Complaint.

19 79. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
20 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
21 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
22 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
23 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
24 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
25 more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
26 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
27 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
28 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

1 80. DEFENDANT further violated California Labor Code §§ 226.7 and the
2 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
3 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
4 Wage Order, one additional hour of compensation at each employee’s regular rate of pay for
5 each workday that rest period was not provided.

6 81. As a proximate result of the aforementioned violations, PLAINTIFF and
7 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
8 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

9
10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
12 **(Cal. Lab. Code § 226)**

13 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and**
14 **against all Defendants)**

15 82. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 83. Cal. Labor Code § 226 provides that an employer must furnish employees within
19 “accurate itemized” statement in writing showing:

- 20 a. Gross wages earned;
- 21 b. Total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment of
23 overtime under subdivision (a) of Section 515 or any applicable order of the
24 Industrial Welfare Commission;
- 25 c. The number of piece rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis;
- 27 d. All deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item;
- e. Net wages earned;

- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

84. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime in the same pay period they earned incentive wages and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct overtime rate for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

85. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA

LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

86. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

87. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

88. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for

1 DEFENDANT within the course and scope of their employment for DEFENDANT. These
2 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
3 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
4 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
6 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
7 do under the laws and regulations of California.

8 89. PLAINTIFF therefore demand reimbursement for expenditures or losses
9 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
10 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
11 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

12
13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES WHEN DUE**

15 **(Cal. Lab. Code §§201, 202, 203)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
17 **Defendants)**

18 90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
19 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 91. Cal. Lab. Code § 200 provides that:

22 As used in this article:(a) "Wages" includes all amounts for labor performed by
23 employees of every description, whether the amount is fixed or ascertained by the
24 standard of time, task, piece, Commission basis, or other method of calculation.
25 (b) "Labor" includes labor, work, or service whether rendered or performed under
26 contract, subcontract, partnership, station plan, or other agreement if the labor to
27 be paid for is performed personally by the person demanding payment.

28 92. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
an employee, the wages earned and unpaid at the time of discharge are due and payable
immediately."

1 93. Cal. Lab. Code § 202 provides, in relevant part, that:

2 If an employee not having a written contract for a definite period quits his or her
3 employment, his or her wages shall become due and payable not later than 72
4 hours thereafter, unless the employee has given 72 hours previous notice of his or
5 her intention to quit, in which case the employee is entitled to his or her wages at
6 the time of quitting. Notwithstanding any other provision of law, an employee
7 who quits without providing a 72-hour notice shall be entitled to receive payment
8 by mail if he or she so requests and designates a mailing address. The date of the
9 mailing shall constitute the date of payment for purposes of the requirement to
10 provide payment within 72 hours of the notice of quitting.

11 94. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
12 SUB-CLASS Members’ employment contract.

13 95. Cal. Lab. Code § 203 provides:

14 If an employer willfully fails to pay, without abatement or reduction, in
15 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
16 who is discharged or who quits, the wages of the employee shall continue as a
17 penalty from the due date thereof at the same rate until paid or until an action
18 therefor is commenced; but the wages shall not continue for more than 30 days.

19 96. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
20 CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,
21 to these employees who actually worked overtime, as required by law.

22 97. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
23 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
24 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
25 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
26 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
27 costs as allowed by law.

28 //

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EIGHTH CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Cal. Lab. Code §§ 1194, 1197 and 1197.1)

**Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
Defendants)**

98. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

100. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

101. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

102. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

103. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

104. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate

1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS in regards to minimum wage pay.

3 105. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately calculated the correct time worked and consequently underpaid the actual time
5 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
6 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
7 benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations.

9 106. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
11 receive the correct minimum wage compensation for their time worked for DEFENDANT.

12 107. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
14 they were entitled to, constituting a failure to pay all earned wages.

15 108. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
16 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
17 CLASS for the true time they worked, PLAINTIFF and the other members of the
18 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
19 injury in amounts which are presently unknown to them and which will be ascertained
20 according to proof at trial.

21 109. DEFENDANT knew or should have known that PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS were under-compensated for their time
23 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
24 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
25 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
26 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
27 correct minimum wages for their time worked.

110. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

111. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698 et seq.]

(Alleged by PLAINTIFF against all Defendants)

112. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

113. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is

1 fundamentally a law enforcement action designed to protect the public and not to benefit private
2 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
3 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
4 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
5 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
6 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
7 subject to arbitration.

8 114. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, bring this Representative Action on behalf of the State of California with respect to herself
11 and all individuals who are or previously were employed by DEFENDANT and classified as
12 non-exempt employees in California during the time period of May 27, 2019 until the present
13 (the "AGGRIEVED EMPLOYEES").

14 115. On May 27, 2020, PLAINTIFF gave written notice by certified mail to the Labor
15 and Workforce Development Agency (the "Agency") and the employer of the specific
16 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
17 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
18 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
19 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
20 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
21 AGGRIEVED EMPLOYEES as herein defined.

22 116. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because Defendant (a) failed to pay PLAINTIFF and other
24 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
25 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
26 failed to provide accurate itemized wage statements, (d) failed to reimburse PLAINTIFF and
27 other AGGRIEVED EMPLOYEES for required business expenses, and (e) failed to timely pay
28 wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,

1 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,
2 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and
3 applicable wage orders, and thereby gives rise to statutory penalties as a result of such conduct.
4 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
5 Attorney General Act of 2004 as the representative of the State of California for the illegal
6 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

7 117. Some or all of the conduct and violations alleged herein occurred during the
8 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
9 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
10 that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30
11 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal.
12 App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one
13 Labor Code violation committed by an employer—to pursue penalties for all the Labor Code
14 violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

15 **PRAYER FOR RELIEF**

16
17 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
18 severally, as follows:

19 1. On behalf of the CALIFORNIA CLASS:

- 20 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
21 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
22 b. An order temporarily, preliminarily and permanently enjoining and restraining
23 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
24 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
25 withheld from compensation due to PLAINTIFFS and the other members of the
26 CALIFORNIA CLASS; and
27 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
28 for restitution of the sums incidental to DEFENDANT's violations due to

1 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 3 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth Seventh, and Eighth
4 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
5 action pursuant to Cal. Code of Civ. Proc. § 382;
- 6 b. Compensatory damages, according to proof at trial, including compensatory
7 damages for minimum wages, overtime compensation, and unreimbursed
8 expenses due PLAINTIFF and the other members of the CALIFORNIA LABOR
9 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
10 PERIOD plus interest thereon at the statutory rate;
- 11 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
12 the applicable IWC Wage Order;
- 13 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
14 which a violation occurs and one hundred dollars (\$100) per member of the
15 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
16 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
17 an award of costs for violation of Cal. Lab. Code § 226; and
- 18 e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
19 LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and
20 costs of suit; and,
- 21 f. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
22 CLASS as a penalty from the due date thereof at the same rate until paid or until
23 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

24 3. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private
26 Attorneys General Act of 2004

27 4. On all claims:

- 28 a. An award of interest, including prejudgment interest at the legal rate;

- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §2802.

DATED: August 1, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiff

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: August 1, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiff

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

May 27, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

CALIFORNIA VOCATIONS, INC
c/o ROBERT BRUCE IRVINE
1620 CYPRESS LN
PARADISE CA 95969

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802 and Applicable Industrial Welfare Commission Wage Orders

Dear Sir/ Madam:

This office represents Thomas Haven (“Plaintiff”) and other aggrieved employees in an action against California Vocations, Inc. (“Defendant”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from August 2016 to November 2019. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, and with minimum and overtime wages for all time worked. Defendant further failed to properly calculate and pay Plaintiff and others similarly situated the correct regular rate for purposes of overtime and for purposes of sick time. Defendant also failed to reimburse Plaintiff for the use of his personal cell phone.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and 2698 *et seq.*

A copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates,

classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney at Law

ZAKAY LAW GROUP, APLC
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Facsimile: (619) 599-8291

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

THOMAS HAVEN, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

CALIFORNIA VOCATIONS, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 3) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197, AND 1197.1

DEMAND FOR A JURY TRIAL

1 Plaintiff Thomas Haven (“PLAINTIFF”), an individual, on behalf of himself and all other
2 similarly situated current and former employees, alleges on information and belief,
3 except for his own acts and knowledge which are based on personal knowledge, the
4 following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant California Vocations, Inc. (“DEFENDANT”) is a California
7 corporation and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout California.

9 2. DEFENDANT provides residential and vocational support to developmentally
10 disabled adults.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods from August of
13 2016 to November of 2019. PLAINTIFF was at all times relevant mentioned herein classified
14 by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
15 received additional compensation from DEFENDANT in the form of non-discretionary
incentive wages.

16 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
17 defined as all individuals who are or previously were employed by DEFENDANT in California
18 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
19 period beginning April 6, 2016 and ending on the date as determined by the Court (the
20 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
21 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
25 which failed to lawfully compensate these employees for all their time worked, including
26 overtime. DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and
27 deceptive business practice whereby DEFENDANT retained and continues to retain wages due
28 to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other

1 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
2 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
3 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
4 current unlawful conduct, and all other appropriate legal and equitable relief.

5 6. The true names and capacities, whether individual, corporate, subsidiary,
6 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
7 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
8 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
9 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
10 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
11 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
12 responsible in some manner for one or more of the events and happenings that proximately
13 caused the injuries and damages hereinafter alleged

14 7. The agents, servants and/or employees of the Defendants and each of them acting
15 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
16 agent, servant and/or employee of the Defendants, and personally participated in the conduct
17 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
18 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
19 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
20 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
21 Defendants' agents, servants and/or employees

22 **THE CONDUCT**

23 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
24 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
25 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to
26 accurately calculate wages for overtime worked by PLAINTIFFS and other members of the
27 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
28 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS

1 forfeited wages due them for working overtime without compensation at the correct overtime
2 rates. DEFENDANT's uniform policy and practice to not pay the members of the
3 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with
4 applicable law is evidenced by DEFENDANT's business records.

5 9. State law provides that employees must be paid overtime at one-and-one-
6 halftimes their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members
7 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
8 employee's performance.

9 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
10 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
11 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
12 performance for DEFENDANT. The non-discretionary incentive program provided all
13 employees paid on an hourly basis with incentive compensation when the employees met the
14 various performance goals set by DEFENDANT. However, when calculating the regular rate of
15 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
16 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
17 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
18 the incentive program to potential and new employees as part of the compensation package. As
19 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
20 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
21 in a systematic underpayment of overtime compensation to PLAINTIFF and other
22 CALIFORNIA CLASS Members by DEFENDANT.

23 11. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
25 matter of company policy, practice and procedure, intentionally and knowingly failed to
26 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct
27 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
28 intended to purposefully avoid the payment of the correct overtime compensation as required by

1 California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
2 over competitors who complied with the law. To the extent equitable tolling operates to toll
3 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
4 PERIOD should be adjusted accordingly.

5 12. As a result of their rigorous work schedules, PLAINTIFF and other
6 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
7 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
8 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT
9 for more than five (5) hours during a shift without receiving an off-duty meal break.
10 Occasionally, PLAINTIFF and other CALIFORNIA CLASS Members had to work through
11 what was supposed to be their off-the-clock meal break. Further, DEFENDANT failed to
12 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
13 each workday in which these employees were required by DEFENDANT to work ten (10) hours
14 of work. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
15 breaks without additional compensation and in accordance with DEFENDANT's strict
16 corporate policy and practice

17 13. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
18 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
19 without being provided ten (10) minute rest periods. Further, these employees were denied their
20 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
21 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
22 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
23 minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other
24 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
25 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS
26 Members were periodically denied their proper rest periods by DEFENDANT and
27 DEFENDANT's managers.
28

1 14. DEFENDANT as a matter of corporate policy, practice and procedure,
2 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
3 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
4 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
5 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
6 are required to indemnify employees for all expenses incurred in the course and scope of their
7 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
8 her employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
10 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
11 believed them to be unlawful."

12 15. In the course of their employment, PLAINTIFF and other CALIFORNIA
13 CLASS Members as a business expense, were required by DEFENDANT to use their own
14 personal cellular phones as a result of and in furtherance of their job duties as employees for
15 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
16 associated with the use of their personal cellular phones for DEFENDANT's benefit.
17 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
18 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the
19 course of their employment with DEFENDANT the PLAINTIFF and other members of the
20 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
21 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
22 benefit of DEFENDANT.

23 16. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
24 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
25 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
26 CLASS with complete and accurate wage statements which failed to show, among other things,
27 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)
28 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments

1 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
2 furnish each of his or her employees with an accurate itemized wage statement in writing
3 showing, among other things, gross wages earned and all applicable hourly rates in effect during
4 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
5 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
6 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
7 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
8 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

9 17. By reason of this uniform conduct applicable to PLAINTIFF and all
10 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
11 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
12 *seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
13 accurately calculate and record the correct overtime rate for the overtime worked by
14 PLAINTIFF and other CALIFORNIA CLASS Members. The proper calculation of these
15 employees’ overtime hour rates is the DEFENDANT’s burden. As a result of DEFENDANT’s
16 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
17 calculate and/or pay all required overtime compensation for work performed by the members of
18 the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
19 thereunder as herein alleged.

20 18. Specifically as to PLAINTIFF’S pay, DEFENDANT provided compensation to
21 him in the form of two components. One component of PLAINTIFF’S compensation was a base
22 hourly wage. The second component of PLAINTIFF’S compensation were non-discretionary
23 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain
24 predefined performance requirements. PLAINTIFF met DEFENDANT’S predefined eligibility
25 performance requirements in various pay periods throughout his employment with
26 DEFENDANT and DEFENDANT paid PLAINTIFF the incentive wages. During these pay
27 periods in which PLAINTIFF was paid the non-discretionary incentive wages by
28 DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but DEFENDANT never

1 included the incentive compensation in PLAINTIFF'S regular rate of pay for the purposes of
2 calculating what should have been PLAINTIFF'S accurate overtime rate and thereby underpaid
3 PLAINTIFF for overtime worked throughout her employment with DEFENDANT. The
4 incentive compensation paid by DEFENDANT constituted wages within the meaning of the
5 California Labor Code and thereby should have been part of PLAINTIFF'S "regular rate of
6 pay." PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and
7 was not fully relieved of duty for his meal periods, resulting in off-the-clock work and unpaid
8 minimum wages. PLAINTIFF was required to perform work as ordered by DEFENDANT for
9 more than five (5) hours during a shift without receiving an off-duty meal break. Further,
10 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
11 in which he was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF
12 therefore forfeited meal and rest breaks without additional compensation and in accordance with
13 DEFENDANT's strict corporate policy and practice. DEFENDANT also provided PLAINTIFF
14 with a paystub that failed to accurately display PLAINTIFF'S correct rates of overtime pay and
15 payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code
16 § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation still
17 owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in
18 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

19 **JURISDICTION AND VENUE**

20 19. This Court has jurisdiction over this Action pursuant to California Code of Civil
21 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
22 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees
23 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

24 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
25 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
26 maintained offices and facilities in this County and/or conducts substantial business in this
27 County, and (ii) committed the wrongful conduct herein alleged in this County against members
28 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

THE CALIFORNIA CLASS

21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning April 6, 2016 and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

23. The California Legislature has commanded that "all wages... ..earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays", and further that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC), however, is statutorily authorized to "establish exemptions from the requirement that an overtime rate of compensation be paid... ..for executive, administrative, and professional employees, provided [inter alia] that the employee is primarily engaged in duties that meet the test of the exemption, [and] customarily and regularly exercises discretion and independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS qualify for exemption from the above requirements.

24. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and

1 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
2 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other
3 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
4 work, required employees to perform this work and permitted or suffered to permit this
5 overtime work.

6 25. DEFENDANT has the legal burden to establish that each and every
7 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
8 accurately calculate the “regular rate of pay” by including the incentive compensation that
9 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
10 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
11 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
12 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
13 overtime rate for all overtime worked, so as to satisfy their burden. This common business
14 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
15 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
16 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
17 claim.

18 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
19 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
20 employee for all overtime worked at the applicable rate, as required by California Labor Code
21 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
22 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
23 as to include all earnings in the overtime compensation calculation as required by California
24 Labor Code §§ 510, *et seq.*

25 27. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that failed to pay all wages due the CALIFORNIA CLASS for all time worked, including overtime, and failed to accurately record the applicable rates of all overtime worked by the CALIFORNIA CLASS;
- b. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly, and/or deceptively having in place a company policy, practice and procedure that failed to correctly calculate overtime compensation due to PLAINTIFF and the members of the CALIFORNIA CLASS;
- c. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members;
- d. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

29. The Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
3 of the CALIFORNIA CLASS, was subjected to the uniform employment
4 practices of DEFENDANT and was a non-exempt employee paid on an hourly
5 basis and paid additional non-discretionary incentive wages who was subjected
6 to the DEFENDANT's practice and policy which failed to pay the correct rate of
7 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
8 CALIFORNIA CLASS and thereby systematically under pays overtime
9 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
10 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
11 members of the CALIFORNIA CLASS were and are similarly or identically
12 harmd by the same unlawful, deceptive, unfair and pervasive pattern of
13 misconduct engaged in by DEFENDANT; and
- 14 d. The representative PLAINTIFF will fairly and adequately represent and protect
15 the interest of the CALIFORNIA CLASS, and has retained counsel who are
16 competent and experienced in Class Action litigation. There are no material
17 conflicts between the claims of the representative PLAINTIFF and the members
18 of the CALIFORNIA CLASS that would make class certification inappropriate.
19 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
20 CALIFORNIA CLASS Members.

21 30. In addition to meeting the statutory prerequisites to a Class Action, this action is
22 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 23 a. Without class certification and determination of declaratory, injunctive, statutory
24 and other legal questions within the class format, prosecution of separate actions
25 by individual members of the CALIFORNIA CLASS will create the risk of:
- 26 i. Inconsistent or varying adjudications with respect to individual members
27 of the CALIFORNIA CLASS which would establish incompatible
28

standards of conduct for the parties opposing the CALIFORNIA CLASS;
and/or;

ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due, including the correct overtime rate, for all time worked by the members of the CALIFORNIA CLASS as required by law;

i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seek declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to

1 recover the relatively small amount of economic losses sustained by the
2 individual CALIFORNIA CLASS Members when compared to the
3 substantial expense and burden of individual prosecution of this
4 litigation;

5 ii. Class certification will obviate the need for unduly duplicative litigation
6 that would create the risk of:

7 1. Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA CLASS, which would establish
9 incompatible standards of conduct for the DEFENDANT; and/or;

10 2. Adjudications with respect to individual members of the
11 CALIFORNIA CLASS would as a practical matter be dispositive
12 of the interests of the other members not parties to the
13 adjudication or substantially impair or impede their ability to
14 protect their interests;

15 iii. In the context of wage litigation, because a substantial number of
16 individual CALIFORNIA CLASS Members will avoid asserting their
17 legal rights out of fear of retaliation by DEFENDANT, which may
18 adversely affect an individual's job with DEFENDANT or with a
19 subsequent employer, the Class Action is the only means to assert their
20 claims through a representative; and

21 iv. A class action is superior to other available methods for the fair and
22 efficient adjudication of this litigation because class treatment will
23 obviate the need for unduly and unnecessary duplicative litigation that is
24 likely to result in the absence of certification of this action pursuant to
25 Cal. Code of Civ. Proc. § 382.

26 31. The Court should permit this action to be maintained as a Class Action pursuant
27 to Cal. Code of Civ. Proc. § 382 because:
28

- 1 a. The questions of law and fact common to the CALIFORNIA CLASS
2 predominate over any question affecting only individual CALIFORNIA CLASS
3 Members because the DEFENDANT's employment practices are uniform and
4 systematically applied with respect to the CALIFORNIA CLASS.
- 5 b. A Class Action is superior to any other available method for the fair and efficient
6 adjudication of the claims of the members of the CALIFORNIA CLASS because
7 in the context of employment litigation a substantial number of individual
8 CALIFORNIA CLASS Members will avoid asserting their rights individually
9 out of fear of retaliation or adverse impact on their employment;
- 10 c. The members of the CALIFORNIA CLASS are so numerous that it is
11 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 12 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
13 obtain effective and economic legal redress unless the action is maintained as a
14 Class Action;
- 15 e. There is a community of interest in obtaining appropriate legal and equitable
16 relief for the acts of unfair competition, statutory violations and other
17 improprieties, and in obtaining adequate compensation for the damages and
18 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
19 CLASS;
- 20 f. There is a community of interest in ensuring that the combined assets of
21 DEFENDANT are sufficient to adequately compensate the members of the
22 CALIFORNIA CLASS for the injuries sustained;
- 23 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
24 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
25 respect to the CALIFORNIA CLASS as a whole;
- 26 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
27 business records of DEFENDANT; and
28

- 1 i. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims
3 arising out of the conduct of DEFENDANT as to the members of the
4 CALIFORNIA CLASS.

5 32. DEFENDANT maintains records from which the Court can ascertain and
6 identify by job title each of DEFENDANT's employees who as have been systematically,
7 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
8 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
9 any additional job titles of similarly situated employees when they have been identified.

10 **THE CALIFORNIA LABOR SUB-CLASS**

11 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
12 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
13 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
14 SUB-CLASS") at any time during the period beginning April 6, 2017 and ending on the date as
15 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
16 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
17 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

18 34. DEFENDANT, as a matter of company policy, practice and procedure, and in
19 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
20 requirements, and the applicable provisions of California law, intentionally, knowingly, and
21 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
22 compensation for the overtime worked by PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
24 work, required employees to perform this work and permitted or suffered to permit this
25 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
26 CLASS Members overtime wages at the correct amount to which these employees are entitled
27 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
28

operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

35. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT's employees who have been systematically, intentionally and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable

37. Common questions of law and fact exist as to members of the CALIFORNIA LABOR SUB-CLASS, including, but not limited, to the following:

- a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime compensation to members of the CALIFORNIA LABOR SUB-CLASS in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to compensation for time worked, including overtime worked, under the overtime pay requirements of California law;
- c. Whether DEFENDANT failed to accurately record the applicable overtime rates for all overtime worked PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS;
- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;

- f. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANT's conduct was willful.

38. DEFENDANT, as a matter of company policy, practice and procedure, failed to accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the applicable overtime rates for the overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANT according to uniform and systematic company procedures as alleged herein above. This business practice was uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 1194, 1197, 1197.1 by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS for all the time they work;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

40. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive

1 wages who was subjected to the DEFENDANT's practice and policy which
2 failed to pay the correct rate of overtime wages due to the CALIFORNIA
3 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
4 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
5 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
6 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
7 of misconduct engaged in by DEFENDANT; and

- 8 d. The representative PLAINTIFF will fairly and adequately represent and protect
9 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
10 counsel who are competent and experienced in Class Action litigation. There are
11 no material conflicts between the claims of the representative PLAINTIFF and
12 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
13 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
14 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
15 Members.

16 41. In addition to meeting the statutory prerequisites to a Class Action, this action is
17 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 18 a. Without class certification and determination of declaratory, injunctive, statutory
19 and other legal questions within the class format, prosecution of separate actions
20 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
21 the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual members
23 of the CALIFORNIA LABOR SUB-CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA LABOR SUB-CLASS; or
- 26 ii. Adjudication with respect to individual members of the CALIFORNIA
27 LABOR SUB-CLASS which would as a practical matter be dispositive of
28

1 interests of the other members not party to the adjudication or
2 substantially impair or impede their ability to protect their interests.

3 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
4 refused to act on grounds generally applicable to the CALIFORNIA LABOR
5 SUB-CLASS, making appropriate class-wide relief with respect to the
6 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
7 uniformly failed to pay all wages due, including the correct overtime rate, for all
8 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
9 required by law;

10 c. Common questions of law and fact predominate as to the members of the
11 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
12 violations of California Law as listed above, and predominate over any question
13 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
14 Class Action is superior to other available methods for the fair and efficient
15 adjudication of the controversy, including consideration of:

16 i. The interests of the members of the CALIFORNIA LABOR SUB-
17 CLASS in individually controlling the prosecution or defense of separate
18 actions in that the substantial expense of individual actions will be
19 avoided to recover the relatively small amount of economic losses
20 sustained by the individual CALIFORNIA LABOR SUB-CLASS
21 Members when compared to the substantial expense and burden of
22 individual prosecution of this litigation;

23 ii. Class certification will obviate the need for unduly duplicative litigation
24 that would create the risk of:

25 1. Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA LABOR SUB-CLASS, which
27 would establish incompatible standards of conduct for the
28 DEFENDANT; and/or,

2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

42. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- 1 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
2 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
3 CLASS before the Court;
- 4 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
5 not be able to obtain effective and economic legal redress unless the action is
6 maintained as a Class Action;
- 7 e. There is a community of interest in obtaining appropriate legal and equitable
8 relief for the acts of unfair competition, statutory violations and other
9 improprieties, and in obtaining adequate compensation for the damages and
10 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
11 LABOR SUB-CLASS;
- 12 f. There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of the
14 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 15 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
16 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
17 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 18 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
19 ascertainable from the business records of DEFENDANT. The CALIFORNIA
20 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
21 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
22 PERIOD; and
- 23 i. Class treatment provides manageable judicial treatment calculated to bring an
24 efficient and rapid conclusion to all litigation of all wage and hour related claims
25 arising out of the conduct of DEFENDANT as to the members of the
26 CALIFORNIA LABOR SUB-CLASS.
- 27
28

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 43. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 44. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

10 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
12 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

18 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
19 engage in a business practice which violates California law, including but not limited to, the
20 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
21 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,
22 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
23 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
24 constitute unfair competition, including restitution of wages wrongfully withheld.

25 47. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
26 unfair in that these practices violated public policy, were immoral, unethical, oppressive
27 unscrupulous or substantially injurious to employees, and were without valid justification or
28 utility for which this Court should issue equitable and injunctive relief pursuant to Section

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 48. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
6 accurately to record the applicable rate of all overtime worked, and failed to provide the
7 required amount of overtime compensation due to a systematic miscalculation of the overtime
8 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
9 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
10 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
11 including restitution of wages wrongfully withheld.

12 49. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
13 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANT.

16 50. By the conduct alleged herein, DEFENDANT's practices were also unfair and
17 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

19 51. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
20 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
21 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
22 for each workday in which a second off-duty meal period was not timely provided for each ten
23 (10) hours of work.

24 52. PLAINTIFF further demands on behalf of herself and on behalf of each
25 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
26 was not timely provided as required by law.

27 53. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
2 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

5 54. All the acts described herein as violations of, among other things, the Industrial
6 Welfare Commission Wage Orders, the California Code of Regulations, and the California
7 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
8 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
9 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

10 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
11 and do, seek such relief as may be necessary to restore to them the money and property which
12 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
14 unfair business practices, including earned but unpaid wages for all overtime worked.

15 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

19 57. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
20 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
21 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
22 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
23 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
24 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
25 engage in these unlawful and unfair business practices.

26 //

27 //

SECOND CAUSE OF ACTION

**FAILURE TO PAY OVERTIME COMPENSATION
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
Defendants)**

58. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

60. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

61. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amount specified by law.

62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

63. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set forth herein, DEFENDANT's uniform policy and practice was to

1 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
3 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
4 all overtime worked.

5 64. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
6 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
7 result of implementing a uniform policy and practice that denied accurate compensation to
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for all
9 overtime worked, including, the work performed in excess of eight (8) hours in a workday
10 and/or forty (40) hours in any workweek.

11 65. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
13 consequently underpaid the actual time worked by PLAINTIFF and other members of the
14 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
15 payment of all earned wages, and other benefits in violation of the California Labor Code, the
16 Industrial Welfare Commission requirements and other applicable laws and regulations.

17 66. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
19 receive full compensation for all overtime worked.

20 67. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
24 to a valid collective bargaining agreement that would preclude the causes of action contained
25 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the
26 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
27 non-waivable rights provided by the State of California.

28 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
they were entitled to, constituting a failure to pay all earned wages.

1 69. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
3 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
4 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
6 to accurately record and pay using the applicable overtime rate as evidenced by
7 DEFENDANT's business records and witnessed by employees.

8 70. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
9 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS for the true time they worked, PLAINTIFF and the other members of the
11 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
12 injury in amounts which are presently unknown to them and which will be ascertained
13 according to proof at trial.

14 71. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
16 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
17 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
18 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
19 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
20 applicable overtime rate.

21 72. In performing the acts and practices herein alleged in violation of California labor
22 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
23 all time worked and provide them with the requisite overtime compensation, DEFENDANT
24 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
25 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
26 disregard for their legal rights, or the consequences to them, and with the despicable intent of
27 depriving them of their property and legal rights, and otherwise causing them injury in order to
28 increase company profits at the expense of these employees.

73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
therefore request recovery of all unpaid wages, including overtime wages, according to proof,

1 interest, statutory costs, as well as the assessment of any statutory penalties against
2 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
3 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
4 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S
5 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
6 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
7 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as
8 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
9 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

12 **(Cal. Lab. Code §§ 226.7 & 512)**

13 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
14 **Defendants)**

15 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 75. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
19 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
20 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
21 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
22 did not prevent these employees from being relieved of all of their duties for the legally required
23 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
24 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
25 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
26 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
27 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
28 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS

1 therefore forfeited meal breaks without additional compensation and in accordance with
2 DEFENDANT's strict corporate policy and practice.

3 76. DEFENDANT further violated California Labor Code §§ 226.7 and the
4 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
5 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable
6 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
7 each workday that a meal period was not provided.

8 77. As a proximate result of the aforementioned violations, PLAINTIFF and
9 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
10 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

11
12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

14 **(Cal. Lab. Code §§ 226.7 & 512)**

15 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
Defendants)**

16 78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
17 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
18 paragraphs of this Complaint.

19 79. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
20 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
21 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
22 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
23 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
24 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
25 more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
26 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
27 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
28 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

1 80. DEFENDANT further violated California Labor Code §§ 226.7 and the
2 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
3 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
4 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
5 each workday that rest period was not provided.

6 81. As a proximate result of the aforementioned violations, PLAINTIFF and
7 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
8 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

9
10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
12 **(Cal. Lab. Code § 226)**

13 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and**
14 **against all Defendants)**

15 82. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 83. Cal. Labor Code § 226 provides that an employer must furnish employees within
19 "accurate itemized" statement in writing showing:

- 20 a. Gross wages earned;
- 21 b. Total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment of
23 overtime under subdivision (a) of Section 515 or any applicable order of the
24 Industrial Welfare Commission;
- 25 c. The number of piece rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis;
- 27 d. All deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item;
- e. Net wages earned;

- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

84. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime in the same pay period they earned incentive wages and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct overtime rate for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

85. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA

LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

86. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

87. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

88. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for

1 DEFENDANT within the course and scope of their employment for DEFENDANT. These
2 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
3 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
4 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
6 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
7 do under the laws and regulations of California.

8 89. PLAINTIFF therefore demand reimbursement for expenditures or losses
9 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
10 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
11 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

12
13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES WHEN DUE**

15 **(Cal. Lab. Code §§201, 202, 203)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
17 **Defendants)**

18 90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
19 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 91. Cal. Lab. Code § 200 provides that:

22 As used in this article:(a) "Wages" includes all amounts for labor performed by
23 employees of every description, whether the amount is fixed or ascertained by the
24 standard of time, task, piece, Commission basis, or other method of calculation.
25 (b) "Labor" includes labor, work, or service whether rendered or performed under
26 contract, subcontract, partnership, station plan, or other agreement if the labor to
27 be paid for is performed personally by the person demanding payment.

28 92. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
an employee, the wages earned and unpaid at the time of discharge are due and payable
immediately."

1 93. Cal. Lab. Code § 202 provides, in relevant part, that:

2 If an employee not having a written contract for a definite period quits his or her
3 employment, his or her wages shall become due and payable not later than 72
4 hours thereafter, unless the employee has given 72 hours previous notice of his or
5 her intention to quit, in which case the employee is entitled to his or her wages at
6 the time of quitting. Notwithstanding any other provision of law, an employee
7 who quits without providing a 72-hour notice shall be entitled to receive payment
8 by mail if he or she so requests and designates a mailing address. The date of the
9 mailing shall constitute the date of payment for purposes of the requirement to
10 provide payment within 72 hours of the notice of quitting.

11 94. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
12 SUB-CLASS Members’ employment contract.

13 95. Cal. Lab. Code § 203 provides:

14 If an employer willfully fails to pay, without abatement or reduction, in
15 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
16 who is discharged or who quits, the wages of the employee shall continue as a
17 penalty from the due date thereof at the same rate until paid or until an action
18 therefor is commenced; but the wages shall not continue for more than 30 days.

19 96. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
20 CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,
21 to these employees who actually worked overtime, as required by law.

22 97. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
23 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
24 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
25 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
26 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
27 costs as allowed by law.

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EIGHTH CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Cal. Lab. Code §§ 1194, 1197 and 1197.1)

**Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
Defendants)**

98. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

100. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

101. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

102. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

103. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

104. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate

1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS in regards to minimum wage pay.

3 105. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately calculated the correct time worked and consequently underpaid the actual time
5 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
6 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
7 benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations.

9 106. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
11 receive the correct minimum wage compensation for their time worked for DEFENDANT.

12 107. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
14 they were entitled to, constituting a failure to pay all earned wages.

15 108. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
16 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
17 CLASS for the true time they worked, PLAINTIFF and the other members of the
18 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
19 injury in amounts which are presently unknown to them and which will be ascertained
20 according to proof at trial.

21 109. DEFENDANT knew or should have known that PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS were under-compensated for their time
23 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
24 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
25 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
26 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
27 correct minimum wages for their time worked.

110. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

111. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

- 1 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS; and
- 4 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 7 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 8 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth Seventh, and Eighth
9 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
10 action pursuant to Cal. Code of Civ. Proc. § 382;
- 11 b. Compensatory damages, according to proof at trial, including compensatory
12 damages for minimum wages, overtime compensation, and unreimbursed
13 expenses due PLAINTIFF and the other members of the CALIFORNIA LABOR
14 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
15 PERIOD plus interest thereon at the statutory rate;
- 16 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
17 the applicable IWC Wage Order;
- 18 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
19 which a violation occurs and one hundred dollars (\$100) per member of the
20 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
21 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
22 an award of costs for violation of Cal. Lab. Code § 226; and
- 23 e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
24 LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and
25 costs of suit; and,
- 26 f. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
27 CLASS as a penalty from the due date thereof at the same rate until paid or until
28 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

1 3. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
- 5 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
- 6 and/or §2802.

7

8 DATED: May 11, 2020

9

10 **ZAKAY LAW GROUP, APLC**

11

12 By: _____

13 Shani O. Zakay

14 Attorney for Plaintiff

15 **DEMAND FOR A JURY TRIAL**

16

17 PLAINTIFF demands a jury trial on issues triable to a jury.

18 DATED: May 11, 2020

19

20 **ZAKAY LAW GROUP, APLC**

21

22 By: _____

23 Shani O. Zakay

24 Attorney for Plaintiff

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